



April 10, 2008
Page 2

In this case, Michael Falke and Mark Gemignani are the principals of Plaintiff Arcon Solutions. In addition, Mr. Falke and Mr. Gemignani are themselves parties in the related Florida state court case of *Wachovia Bank, N.A. v. Gemignani*, Case No. 08-10056 CA 20. The Florida case is an interpleader action wherein Wachovia Bank seeks declaratory relief regarding a sum of money to which both Plaintiff Arcon LLC and Defendants East 29th Street, *et al.* assert an interest. Because the Florida state action and the New York federal action involve essentially identical clients and attorneys, all documents for both cases are identified under one matter number in the office system, namely matter no. 1605. Unfortunately, when Your Honor's fax arrived, our file clerk did not recognize that the case as captioned had been assigned to matter no. 1605. As a result, the clerk inadvertently mislabeled Your Honor's fax with the matter number assigned to "general" documents that are not associated with a particular case.

Because of this, Your Honor's fax regarding the pre-trial conference was never distributed to the appropriate attorneys on the case and the date was never calendared. In fact, the first time any attorney in the office became aware of the pre-trial conference was when I received a telephone call from Your Honor's chambers on April 4, 2008, the morning the conference was scheduled to take place. Furthermore, Steven Rosen, Esq., who is the attorney who signed the initial pleading, did not receive the March 6, 2008, notice, and was himself unaware of the April 4, 2008, hearing.

This office sincerely regrets the mistake that resulted in the attorneys' absence at the Court's properly scheduled pre-trial conference. Clearly, it was not our intent to disregard any order of this Court, and our office clerk has since been properly advised as to the correct manner in which papers related to this case need to be coded and distributed. The undersigned represents and certifies to the Court that this clerical error was the result of mistake and inadvertence. Because of this genuine and excusable mistake, and because it will not prejudice the opposing parties, the undersigned respectfully requests that the Court (i) vacate its Order of April 4, 2008 discontinuing Plaintiff's action, (ii) restore the Plaintiff's case to the active calendar, and (iii) reschedule the pre-trial conference in this matter for a later date.

Should you have any questions regarding the above, please do not hesitate to contact me.

Respectfully submitted,



ROBERT F. SALKOWSKI
Florida Bar No. 903124
(*Pro Hac Vice* Motion Pending)

cc: R. Zarco, Esq.
M. Buchanan, Esq.
S. Rosen, Esq.